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7  
8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:  
11  
12 **ALVARO ERNESTO MOLINA**  
6733 Lemp Avenue, #2  
13 North Hollywood, CA 91606  
Pharmacy Technician License No. TCH  
14 66419

Case No. 3925

**A C C U S A T I O N**

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Virginia Herold ("Complainant") brings this Accusation solely in her official capacity  
19 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

20 2. On or about November 29, 2005, the Board of Pharmacy issued Pharmacy Technician  
21 License Number TCH 66419 to Alvaro Ernesto Molina ("Respondent"). The Pharmacy  
22 Technician License was in full force and effect at all times relevant to the charges brought herein  
23 and will expire on May 31, 2011, unless renewed.

24 **JURISDICTION**

25 3. This Accusation is brought before the Board of Pharmacy ("Board"), Department of  
26 Consumer Affairs, under the authority of the following laws. All section references are to the  
27 Business and Professions Code ("Code") unless otherwise indicated.

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## STATUTORY PROVISIONS

4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 490 states:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

6. Section 4300 permits the Board to take disciplinary action to suspend or revoke a license issued by the Board.

7. Section 4301 states:

"The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

....

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the

1 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.  
2 The board may inquire into the circumstances surrounding the commission of the crime, in order  
3 to fix the degree of discipline or, in the case of a conviction not involving controlled substances  
4 or dangerous drugs, to determine if the conviction is of an offense substantially related to the  
5 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or  
6 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning  
7 of this provision. The board may take action when the time for appeal has elapsed, or the  
8 judgment of conviction has been affirmed on appeal or when an order granting probation is made  
9 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
10 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
11 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
12 indictment."

### 13 **REGULATORY PROVISIONS**

14 8. California Code of Regulations, title 16, section 1770, states:

15 "For the purpose of denial, suspension, or revocation of a personal or facility license  
16 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a  
17 crime or act shall be considered substantially related to the qualifications, functions or duties of a  
18 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a  
19 licensee or registrant to perform the functions authorized by his license or registration in a manner  
20 consistent with the public health, safety, or welfare."

### 21 **COST RECOVERY**

22 9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
23 administrative law judge to direct a licentiate found to have committed a violation or violations of  
24 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
25 enforcement of the case.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Criminal Convictions)**

3 10. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and  
4 490 of the Code, in conjunction with California Code of Regulations, title 16, section 1770, in  
5 that Respondent was convicted of a crimes which are substantially related to the qualifications,  
6 functions, or duties of a pharmacy technician, as follows:

7 11. On or about September 13, 2010, in the criminal matter entitled *The People of the*  
8 *State of California vs. Alvaro Molina* (Super. Ct. County of Los Angeles, 2010, No.  
9 XNWLA06584101), Respondent was convicted of violating Penal Code section 594, subdivision  
10 (a), vandalism, a felony. Respondent was placed on formal probation for a period of three years  
11 and was ordered to serve two hundred and seventy days in jail. The basis for the conviction is that  
12 on or about May 8, 2010, Respondent kicked in the front door of the residence of his former  
13 girlfriend's house. Respondent further pulled out his former girlfriend's hair and spit on her.  
14 Respondent punched and damaged the television and cell phone, and then fled the residence. On  
15 or about August 16, 2010, Respondent admitted to police officers that he damaged his former  
16 girlfriend's television and cell phone.

17 12. On or about November 28, 2007, in the criminal matter entitled *The People of the*  
18 *State of California vs. Alvaro Molina* (Super. Ct. County of Los Angeles, 2007, No. BA327607),  
19 Respondent was convicted of violating Penal Code section 594, subdivision (a), vandalism, a  
20 felony. Respondent was placed on formal probation for a period of three years and was ordered to  
21 serve sixty days in jail, pay restitution to the victim, and not associate with gang members. The  
22 basis for the conviction is that on or about August 15, 2007, Respondent and another male were  
23 causing a disturbance in their neighborhood. A neighbor began videotaping Respondent and the  
24 other male to record their disruptive behavior. When Respondent saw the neighbor videotaping,  
25 he dragged the neighbor down a flight of stairs to the ground causing physical injury. Respondent  
26 then grabbed the video camera, smashed it to the ground, and then threw it around causing it to  
27 shatter into pieces.

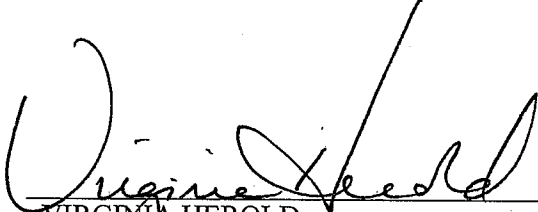
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**PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacy Technician License Number TCH 66419, issued to Alvaro Ernesto Molina;
2. Ordering Alvaro Ernesto Molina to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: 7/15/11

  
VIRGINIA HEROLD  
Executive Officer  
Board of Pharmacy  
Department of Consumer Affairs  
State of California  
Complainant

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